

Minimum wage opinion letter

March 11, 2010

Re: Request for an Opinion Letter Regarding Compensable Work Time

You have asked, "whether the time Sales Associates spend counting the tips and distributing them to other employees is compensable work time given the employer's policy that the tips must be counted and reported to the employer, and then distributed to all employees who worked the shift in accordance with the employer's designated allocation formula."

You also state that the tip policy at the establishment was implemented by the employer, and that the employer "requires all employees who receive the tips to report the total amount of tips received either on a daily basis and/or weekly basis" and to "distribute the tips to all employees who served customers on a given shift..."

Working time, which is compensable, is defined in the Division of Occupational Safety's Minimum Wage regulations at 455 CMR 2.01 as follows:

Includes all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed work site, and any time worked before or beyond the end of the normal shift to complete the work. Working time does not include meal times during which an employee is relieved of all work-related duties.

If the employer requires the employees to remain on the employer's premises beyond the end of a shift in order to count and distribute the tips, the time spent doing those tasks is compensable time.

Please be advised that Massachusetts General Laws chapter 149 section 152A contains specific requirements and limitations concerning tips and tip pools. I encourage you to ensure that the distribution of tips that you describe is consistent with that law. To that end, you may wish to view an Advisory issued by the Attorney General on this issue. You can find the Advisory at: http://www.mass.gov/Cago/docs/Workplace/tips_advisory.pdf.

I hope that this answers your question.

Sincerely,
Mitchell Goldstein
General Counsel